

## **2009 DRAFTING REQUEST**

### **Bill**

Received: **11/13/2008**

Received By: **pgrant**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Byrnes**

This file may be shown to any legislator: **NO**

Drafter: **pgrant**

May Contact:

Addl. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies:

Submit via email: **NO**

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### **Pre Topic:**

DOA:.....Byrnes, BB0214 -

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### **Topic:**

Property appraisals; right to appeal compensation amount; litigation expenses

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### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 11/19/2008	nmatzke 11/20/2008		_____			S&L
/1			mduchek 11/21/2008	_____	mbarman 11/21/2008		

FE Sent For:

<END>

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/?	pgrant	1 <sup>nwn</sup> 11/20	 11/20	_____ _____			

FE Sent For:

**<END>**

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Streamline Real Estate Acquisition Process
- Tracking Code: BB0214 064
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Tyler Byrnes
  - Phone: 266-1039
  - Email: tyler.byrnes@wisconsin.gov
- Agency acronym: DOT
- Agency number: 395
- Priority (Low, Medium, High): Medium

Intent: Please prepare a draft that streamlines the real estate acquisition process by modifying s. 32(2)(b) to require a property appraisal report prepared by either party during real estate acquisitions be provided to the other party in a timely manner. In addition, modify s. 32.05(2a) to eliminate the right to appeal the amount of compensation awarded within six months after a landowner signs a deed or conveys a property. Also, redefine reasonable litigation attorney costs that are reimbursable under s. 32.28(3).

**Department of Transportation  
2009-11 Biennial Budget Request  
STATUTORY MODIFICATIONS**

**DIN NUMBER:** 5305

**TOPIC:** Streamline Real Estate Acquisition Process

**DESCRIPTION OF CHANGE:**

The Department requests modification to s. 32.05(2)(b), Wis. Stats., to require that any property appraisal report prepared by either party during real estate acquisition negotiations be provided to the other party in a timely manner. Failure to exchange the report or reports should bar the other party from being able to introduce the report, or any evidence of value derived from the report, in any subsequent litigation.

The Department requests modification to s. 32.05(2a), Wis. Stats., to eliminate the right to appeal the amount of compensation awarded within six months after a landowner signs a deed or conveys a property. This change does not eliminate the property owner's right to appeal within two years if the land is condemned.

As part of the property acquisition process, owners have the right to appeal any condemnation award. However, the Department requests modification to s. 32.28(3), Wis. Stats., to define reasonable litigation attorney costs that are reimbursable if the court award is more than 15% of the jurisdictional offer. Language should be added to read: "Reasonable attorney fees under s. 32.28(3), Wis. Stats., shall be no more than 1/3 of the increased compensation awarded to the condemnee in those cases where the condemnation commission award or jury verdict exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and 15%. In such cases where the 1/3 increase is less than \$5,000, the court may award up to \$5,000 in attorney fees upon showing of good cause to make such an award."

**JUSTIFICATION:**

When the Department acquires property under eminent domain, language in Chapter 32 provides incentives for landowners to avoid negotiating a settlement and instead choose to litigate compensation awards in hopes of receiving a larger value. Some owners are accepting the Department's first offer, signing the deed, and then appealing the amount to ensure litigation. This process results in higher costs and longer acquisition times.

For example, property owners are allowed to obtain their own appraisal and be reimbursed for the cost during negotiations. However, they are not required to share that information with the Department. Without an appraisal, the Department cannot make a counter offer.

Owners can also appeal the amount of compensation provided within six months once conveyance has occurred or a deed is signed. Litigation costs are fully reimbursable if the judgment award is more than 15% of an agency's highest written offer made during negotiations.

As a result, total acquisition cost increases significantly when a landowner appeals the Department's offer to acquire his or her property. For example, litigation expenses and additional compensation payments have increased from a total of \$5 million in FY 04 to nearly \$11 million in FY 07. In addition, a disproportionate amount appears to be going towards plaintiff attorney fees compared to compensation awards. For example, the average litigation attorney fee paid for five property acquisitions between September, 2002 and June, 2006 was \$65,700 compared to only \$39,700 for the compensation increase paid to the owner.

In addition, litigating land purchases consumes more time and resources within the Department compared to negotiating directly with landowners. It could adversely affect the timeline of highway construction projects. Securing land can be a first step in a project and any delays can impact final completion and overall project cost.

The intent of these modifications is to help government agencies acquire property efficiently and reduce taxpayer costs while encouraging property owners to bring to the table their legitimate concerns. They will encourage presenting differences of opinion and other pertinent information during the negotiation stage in order to reach an agreement before going to litigation. For the Department, minimizing litigation efforts will help highway improvement projects stay on schedule and reduce costs.

Streamlining the real estate acquisition process will still preserve the rights of property owners. A property owner can continue to use his or her own appraisal during negotiations and will maintain the right to appeal an award in the event of condemnation. Because attorney fees are a separate reimbursable cost, establishing limits on these fees will not affect the amount an owner receives for real estate acquired by the Department.

Date (time)  
needed \_\_\_\_\_

LRB- 0718 / 1

## DOA BUDGET DRAFT

PG : nuntjs

Use the appropriate components and routines developed for bills.

>>FOR BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT . . . [DO NOT generate catalog]; relating to: the budget. ....

.....

.....

### *Analysis by the Legislative Reference Bureau*

If titles are needed in the analysis, in the component bar:

For the main heading, execute: ..... create → anal: → title: → head

For the subheading, execute: ..... create → anal: → title: → sub

For the sub-subheading, execute: ..... create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: ..... create → anal: → text

(attached)

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION #.

**2009 BILL**

1 **AN ACT** *to amend* 32.05 (2) (b), 32.05 (2a) and 32.28 (3) (intro.); and *to create*  
2 32.28 (4) of the statutes; **relating to:** condemnation proceedings.

***Analysis by the Legislative Reference Bureau*****EMINENT DOMAIN**

Currently, whenever an entity with the power of condemnation seeks to acquire property by condemnation, it must provide the property owner with an appraisal of the property and pay for the owner to acquire his or her own appraisal. This bill provides that, if the property is being acquired for sewers or transportation facilities, the owner may use an appraisal prepared by the owner or condemnor during the period preceding negotiations in any subsequent appeal only if the appraisal was provided to the other party during that period.

Currently, if a property owner agrees voluntarily to convey the property to the condemnor at an agreed-upon price, the owner has the right, within six months, to appeal the issue of the amount of compensation paid by the condemnor. This bill eliminates this right for owners whose property is being acquired for sewers or transportation facilities. The bill does not eliminate the owner's right to appeal the amount of compensation within two years if his or her property is condemned.

Currently, a property owner who on appeal is awarded more in just compensation than was offered by the condemnor is entitled to litigation expenses, including reasonable attorney fees, if the award exceeds the offer by at least \$700 and at least 15 percent. This bill provides that, in such a case, the amount of attorney fees included in litigation expenses may not exceed one-third of the difference between the offer and the award, except that if one-third of that difference is less

**BILL**

than \$5,000, the amount of attorney fees included in litigation expenses may not exceed \$5,000.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 32.05 (2) (b) of the statutes is amended to read:

2           32.05 (2) (b) The condemnor shall provide the owner with a full narrative  
3 appraisal upon which the jurisdictional offer is based and a copy of any other  
4 appraisal made under par. (a) and at the same time shall inform the owner of his or  
5 her right to obtain an appraisal under this paragraph. The owner may obtain an  
6 appraisal by a qualified appraiser of all property proposed to be acquired, and may  
7 submit the reasonable costs of the appraisal to the condemnor for payment. The  
8 owner shall submit a full narrative appraisal to the condemnor within 60 days after  
9 the owner receives the condemnor's appraisal. If the owner does not accept a  
10 negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner  
11 may use <sup>only</sup> ~~an appraisal prepared~~ received from the condemnor under this paragraph,  
12 or an appraisal submitted by the owner to the condemnor within 60 days after the  
13 owner received the condemnor's appraisal under this paragraph, in any subsequent  
14 appeal.

15           **SECTION 2.** 32.05 (2a) of the statutes is amended to read:

16           32.05 (2a) NEGOTIATION. Before making the jurisdictional offer provided in sub.  
17 (3), the condemnor shall attempt to negotiate personally with the owner or one of the  
18 owners or his or her representative of the property sought to be taken for the  
19 purchase of the same. In such negotiation the condemnor shall consider the owner's  
20 appraisal under sub. (2) (b) and may contract to pay the items of compensation



**BILL**

1 enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more  
2 installments on such conditions as the condemnor and property owners may agree.  
3 Before attempting to negotiate under this paragraph, the condemnor shall provide  
4 the owner or his or her representative with copies of applicable pamphlets prepared  
5 under s. 32.26 (6). When negotiating under this subsection, the condemnor shall  
6 provide the owner or his or her representative with the names of at least 10  
7 neighboring landowners to whom offers are being made, or a list of all offerees if less  
8 than 10 owners are affected, together with a map showing all property affected by  
9 the project. Upon request by an owner or his or her representative, the condemnor  
10 shall provide the name of the owner of any other property which may be taken for  
11 the project. The owner or his or her representative shall also have the right, upon  
12 request, to examine any maps in the possession of the condemnor showing property  
13 affected by the project. The owner or his or her representative may obtain copies of  
14 such maps by tendering the reasonable and necessary costs of preparing copies. The  
15 condemnor shall record any conveyance by or on behalf of the owner of the property  
16 to the condemnor executed as a result of negotiations under this subsection with the  
17 register of deeds of the county in which the property is located. The conveyance shall  
18 state the identity of all persons having an interest of record in the property  
19 immediately prior to its conveyance, the legal description of the property, the nature  
20 of the interest acquired and the compensation for such acquisition. The condemnor  
21 shall serve upon or mail by certified mail to all persons named therein a copy of the  
22 conveyance ~~and a notice of the right to appeal the amount of compensation under this~~  
23 ~~subsection. Any person named in the conveyance may, within 6 months after the date~~  
24 ~~of its recording, appeal from the amount of compensation therein stated in the~~  
25 ~~manner set forth in subs. (9) to (12) and chs. 808 and 809 for appeals from an award~~

**BILL****SECTION 2**

1 ~~under sub. (7). For purposes of any such appeal, the amount of compensation stated~~  
2 ~~in the conveyance shall be treated as the award and the date the conveyance is~~  
3 ~~recorded shall be treated as the date of taking and the date of evaluation.~~

4 **SECTION 3.** 32.28 (3) (intro.) of the statutes is amended to read:

5 32.28 (3) (intro.) In lieu of costs under ch. 814 and subject to sub. (4), litigation  
6 expenses shall be awarded to the condemnee if:

7 **SECTION 4.** 32.28 (4) of the statutes is created to read:

8 32.28 (4) If a condemnee is awarded litigation expenses under sub. (3) (d), (e),  
9 (g), or (h), the amount of attorney fees included in litigation expenses may not exceed  
10 an amount equal to one-third of the difference between the award of the  
11 condemnation commission or jury verdict and the jurisdictional offer or highest  
12 written offer prior to the jurisdictional offer, except that if one-third of that  
13 difference is less than \$5,000 and the condemnee shows good cause, the amount of  
14 attorney fees included in litigation expenses may not exceed \$5,000.

15 (b) If a condemnee is awarded litigation expenses under sub. (3) (f), the amount  
16 of attorney fees included in litigation expenses may not exceed an amount equal to  
17 one-third of the difference between the jury verdict and the award of the  
18 condemnation commission, except that if one-third of that difference is less than  
19 \$5,000 and the condemnee shows good cause, the amount of attorney fees included  
20 in litigation expenses may not exceed \$5,000.

21 **SECTION 9357. Initial applicability; other**

22 (1) CONDEMNATION.

23 (a) The treatment of section 32.05 (2) (b) of the statutes first applies to an  
24 appraisal obtained by an owner on the effective date of this paragraph.

# BILL

(b) The treatment of section 32.05 (2a) of the statutes first applies to conveyances recorded with the register of deeds on the effective date of this paragraph.

(c) The treatment of section 32.28 (4) of the statutes first applies to actions brought under chapter 32 of the statutes on the effective date of this paragraph.

**(END)**



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0778/1  
PG:nwn&cjs:md

DOA:.....Byrnes, BB0214 - Property appraisals; right to appeal  
compensation amount; litigation expenses

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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24 (a) The treatment of section 32.05 (2) (b) of the statutes first applies to an  
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1           (b) The treatment of section 32.05 (2a) of the statutes first applies to  
2       conveyances recorded with the register of deeds on the effective date of this  
3       paragraph.

4 (c) The treatment of section 32.28 (4) of the statutes first applies to actions  
5 brought under chapter 32 of the statutes on the effective date of this paragraph.

6 (END)